

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTHONY DAUNT, TOM BARRETT,
AARON BEAUCHINE, KATHY BERDEN,
STEPHEN DAUNT, GERRY
HILDENBRAND, GARY KOUTSOUBOS,
LINDA LEE TARVER, PATRICK MEYERS,
MARIAN SHERIDAN, MARY SHINKLE,
NORM SHINKLE, PAUL SHERIDAN,
BRIDGET BEARD, CLINT TARVER,

No. 1:19-cv-00614

HON. JANET T. NEFF

MAG. ELLEN S. CARMODY

Plaintiffs,

v

JOCELYN BENSON, in her official capacity as
Michigan Secretary of State,

Defendant.

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DEFENDANT'S PRE-MOTION CONFERENCE REQUEST

Defendant Secretary of State Jocelyn Benson requests a Pre-motion
Conference to determine a briefing schedule for a Rule 12 motion to dismiss. Upon
reviewing the allegations of fact and law included in the Plaintiffs' complaint,

Defendant has determined that the allegations fail to state a claim for which relief may be granted. The basis of that conclusion is outlined briefly below.

Plaintiffs' complaint consists of two arguments that Michigan's newly-adopted constitutional amendments changing the method of drawing legislative districts violates their rights under the U.S. Constitution: (1) that it violates their First Amendment rights of association through the exclusion of candidates, elected officials, lobbyists, employees of the legislature, paid political consultants, unclassified political appointees, and people who are parents, children, or spouses of persons who fall into these categories, and (2) that it violates their right to Equal Protection under the Fourteenth Amendment on the basis that it denies them a "government benefit" (i.e. membership on the redistricting commission) on the basis of their exercise of the above First Amendment rights.

However, these claims fail to demonstrate that Michigan's constitutional amendment violates Plaintiffs' rights under either the First or Fourteenth Amendment. Succinctly stated, Plaintiffs are not being discriminated against on the basis of their relationship to, membership of, or participation in political parties or the legislative process, but are instead precluded from being members of the redistricting commission on the basis of their apparent conflict of interest. The problem that the People of the State of Michigan sought to address with the amendment was the partisanship with which legislative districts were being drawn, and the solution they chose was to take that power out of the hands of people with a direct interest in the outcome. This is essentially no different than excluding people

from jury duty who have a relationship to the parties or who have a stake in the outcome of the case. None of the cases cited by Plaintiffs hold that the U.S. Constitution prohibits excluding people as decision-makers based on a conflict of interest.

Accordingly, Plaintiffs have failed to state claims for the violation of their constitutional rights through Michigan's constitutional amendment providing for an independent redistricting commission, and the complaint should be dismissed in its entirety.

Defendants are prepared to brief these issues in full immediately, and in fact they are already preparing to respond the Plaintiffs' previously filed motion for a preliminary injunction. As a brief in opposition to a preliminary injunction, that brief will necessarily include, as part of its analysis, that Plaintiffs are not likely to prevail on the merits of their claim. Defendant therefore requests the Court schedule a Pre-Motion Conference at the earliest available date so that the motion to dismiss may be fully briefed and decided as quickly as possible.

Respectfully submitted,

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Dated: August 19, 2019

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2019, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing of the foregoing document as well as via US Mail to all non-ECF participants.

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